

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.A.No.107-DB of 1998**

DATE OF DECISION: December 5, 2007

SANJAY @ DHOLU

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE RAKESH KUMAR GARG.**

**PRESENT: MS. PUJA, ADVOCATE FOR THE APPELLANT.
MR. S.K. HOODA, SR.DAG, HARYANA.**

ASHUTOSH MOHUNTA, J.

The appellant Sanjay @ Dholu has filed this appeal against the judgement and order of sentence dated 13.2.1998 and 14.2.1998, respectively, passed by Addl. Sessions Judge, Hisar vide which the appellant has been convicted under Section 302 IPC and has been sentenced to undergo R.I. for life and to pay a fine of Rs.5000/- and in default of payment of fine, the appellant has to undergo R.I. for further period of 2 years.

The case of the prosecution is that on 19.11.1994, forms for the annual examination were to be filled in and on that account Balbir Singh, complainant, Gopi Ram, Naresh Kumar residents of Mangli Aklan who were also students of Jat College and Sushil (deceased) who was studying through correspondence course were sitting on the stairs of the college and were cutting jokes. At about 11.30 a.m. the accused Sanjay @ Dholu who

was also studying in the same college came there. When he saw that complainant and his three companions were laughing, the accused presumed that the complainant alongwith Gopi Ram, Naresh Kumar and Sushil were laughing at him. Upon this, he hurled abuses upon the complainant and his aforementioned companions said in a challenging tone that whoever claims to be 'Tiri Khan' (powerful person), he should come forward. After threatening them Sanjay went inside the college premises and the complainant and his companions started to chat again with each other at that very place. After about 10 minutes the accused Sanjay came back and gave a slap to Gopi Ram. All the four persons stood up and in the meantime Sanjay took out a knife and struck with his knife on the complainant's right hand which hit him on the left side of his abdomen but he escaped as the knife struck against a chain which was hanging from the left pocket. The shirt of the complainant was torn. On seeing that the accused was in a foul mood and was holding a knife, Balbir Singh alongwith his three other companions, namely, Gopi Ram, Naresh Kumar and Sushil started running towards the road outside the college. Sushil Kumar remained behind his companions. He was at a small distance from the college gate when the complainant and his companions heard a shriek of Sushil. When they turned back they saw that Sushil was made to fall on the ground by Sanjay. They went towards Sushil to rescue him, however, in the meantime the accused inflicted two knife blows to Sushil which hit him on the right side of the chest and under the right arm pit. In the meantime, many students of the college also collected. The accused ran away from the spot alongwith his knife. Sushil was profously bleeding. Sushil was removed to Civil Hospital, Hisar by the complainant and one Vikas and after some time

Sushil succumbed to his injuries.

The statement of Balbir Singh, complainant was recorded at 2.15 p.m. on 19.11.1994, by SI Shiv Raj, PW11 and on the basis of the statement the present case was registered and investigated. The dead body of Sushil was sent for post mortem. PW6 Dr. Vikas Girdhar, Medical Officer, Civil Hospital, Hisar conducted post mortem of the body of the deceased and found the following injuries:-

- “1. A stab wound 2 cm x 1 cm on the right arm on the upper third of the right arm. On probing it was found 6 cm deep and there was a corresponding wound on medial side of back of arm. The wound was verticle. The upper margin was sharp cut. There was corresponding wound was 0.7 cm x 0.3 cm. On dissection Ecymosis was present on the sub cutaneous tissue of skin. On dissection clotted blood was found in the wound and under lying muscle. The sub cutaneous tissues were found cut across.*
- 2. Oblieque stab wound of the size 1.2 cm x 0.5 cm on right side of chest in lateral clavicular line near axilla between third and 4th ribs. The wound was 3 cm deep and lateral. The margins were sharp cut. Blood clot was present. The underlying muscles were found cut and ceeymosis of sub-cutaneous tissue was present.*

3. *Oblique stab wound of the size 2 cm and 1 cm on the right side of chest in mid clavicular line 3 cm below the nipple. On probing the wound was found to be 9.8 cm deep going medially backward and horizontally. On dissection the underlying muscles in intercostal space was found cut. Pleura pleura and lung tract of stab wound were traced by dissection. The whole thoracic cavity was full of blood which was approximately 2 litre. There was a stab wound in right atrium of the size 0.5 cm x 0.4 cm. On pressing the hard blood oozed out from the wound. There was also corresponding wound in pericardium. Rest of lung and pleura were pale and healthy. Right side of heart was empty and left side was full of blood. The lateral margins of injury was sharply cut. The stomach contained approximately 1.2 lt. Of semi digested food matter. Small intestines contained semi digested food and the large intestines contained faecal matter. The bladder was empty. Rest of the organs were pale and healthy.”*

PW6 Dr. Vikas Girdhar opined that the cause of death was due to shock and haemorrhage as a result of above said injuries. He further opined that the injuries were sufficient to cause death in the ordinary course of nature.

On 23.11.1994, Shiv Raj S.I. PW11 alongwith other police officials received a secret information regarding the whereabouts of the

accused. The police party raided the spot and the accused on seeing them started running away but he was overpowered. A knife was recovered from the back pocket of the accused. The accused was arrested. Charge under Section 302 IPC was framed against the appellant on 17.4.1995, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined the two eye witnesses, namely, Balbir Singh, complainant, PW4 and Gopi Ram PW5. Apart from the above, eight other witnesses including Dr. Vikas Girdhar PW6 were also examined and the report of Chemical Examiner was tendered in evidence.

The statement of the accused was recorded under Section 313 Cr.P.C. He denied the allegations against him and stated that he has been falsely implicated due to party faction in the Union of students in Jat College. He did not lead any evidence and closed his defence case.

The trial Court after going through the evidence of the eye witnesses as well as the testimonies of Dr. Vikas Girdhar, PW6 and other official witnesses held that Sushil was murdered by the appellant Sanjay @ Dholu and accordingly convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life alongwith fine.

Learned counsel for the appellant has argued that the testimonies of complainant Balbir Singh, PW4 and Gopi Ram, PW5 are not in consonance with the medical evidence. It is submitted by the learned counsel that both the eye witnesses Balbir Singh PW4 and Gopi Ram PW5 have stated that the accused had inflicted two knife blows on the person of the deceased Sushil whereas, three injuries were found on the dead body of the deceased as is clear from the post-mortem report and the statement of

Dr. Vikas Girdhar, PW6. It is contended that both the eye witnesses who are alleged to have seen the entire occurrence could not have missed seeing the third injury as mentioned in the post-mortem report and hence no reliance should be placed on the depositions made by PW4 and PW5.

Learned counsel for the State, however, submits that Balbir Singh PW4 and Gopi Ram PW5 turned back only when they heard the shrieks of Sushil. It is submitted that one knife injury must have been given by the accused Sanjay and it is only thereafter that both the aforementioned eye witnesses turned back to witness the occurrence.

A perusal of the statements of PW4 Balbir Singh and PW5 Gopi Ram shows that they alongwith Naresh and Sushil started running when the accused caused knife injury to the complainant. While running they heard cries of Sushil and at that stage they turned back and saw the accused giving knife blows to Sushil. One knife blow must have been given by the accused before PW4 Balbir Singh and PW5 Gopi Ram could witness the occurrence. One blow was given in chest and another blow was under the right arm pit of the deceased. From the aforementioned statements, it is clear that the accused had struck Sushil with a knife who started crying aloud and thereafter the entire occurrence was witnessed by PW4 and PW5. Thus, there is no contradiction in the statements of the eye witnesses and the evidence of Dr. Vikas Girdhar PW6.

Learned counsel for the appellant has further contended that the accused has been falsely implicated in the present case because of group rivalry. It is submitted by the learned counsel that accused was a supporter of one Anil whereas the complainant party were the supporters of Ranbir Punia and because of this rivalry the accused has been falsely implicated.

This argument of the counsel for the appellant is without any merit because the elections in the college had taken place in September, 1994 whereas the occurrence took place on 19.11.1994, i.e., almost two months after the elections. Moreover, neither the accused was a candidate in the elections nor the deceased Sushil, complainant Balbir Singh PW4, Gopi Ram PW5 or Naresh were the candidates hence the accused cannot be said to have been falsely implicated in the present case.

Learned counsel for the appellant has also submitted that there was delay of 4 or 5 hours in lodging the FIR in this case, despite the fact that the Police Station was only ½ km. away from the place of occurrence.

This argument of the counsel for the appellant is also without any merit as the occurrence had taken place at 11.30 a.m. on 19.11.1994. The injured Sushil was immediately removed to the hospital by Balbir Singh, PW4 and Vikas. A telephonic message was also sent to the Police Station and Shiv Raj S.I. reached the Jat College and there he was told that Sushil, injured is in a serious condition and has been taken to hospital. The statement of Balbir Singh Ex.PC was recorded at 2.15 p.m. on 19.11.2004. Thereafter, the Special Report was received by the Chief Judicial Magistrate, Hisar at 4.10 p.m. From the aforementioned facts, it is clear that there was no delay in lodging the FIR, hence the argument of the counsel for the appellant that entire prosecution story has been concocted is without any merit.

The occurrence had taken place on 19.11.1994, at about 11.30 a.m. The complainant Balbir Singh PW4, Gopi Ram PW5, Naresh and the deceased Sushil were sitting on the stairs of the college and were joking with each other. The accused who passed by them thought that the

four persons were mocking at him. He abused them and went away only to return after 10 minutes. Then the accused slapped Gopi Ram PW5 and thereafter took out his knife and caused injury to the complainant Balbir Singh PW4. This action of the accused frightened the aforementioned four persons who started running because the accused had a knife in his hand. The accused ran after them and overpowered Sushil and pulled him down on the ground. The accused hit Sushil in his chest and right arm pit which caused his death. The entire occurrence was witnessed from a close range by the complainant, Balbir Singh PW4 and Gopi Ram PW5. The complainant was also inflicted a knife injury. He was examined by PW10 Dr. R.J. Bishnoi, Medical Officer, Government Hospital, Hisar on 19.11.1994, itself and the following injury on the person of the complainant, Balbir Singh PW4 was found:-

“1. An incised wound at the left constal margins 3" left in midline. Wound was obliquely placed and was skin deep. Size of wound was 0.3" x 0.1". Clotted blood was present.”

The injury was declared as simple in nature and the probable duration of the injury was within 6 hours.

Thus, the statement of PW4 Balbir Singh, complainant that he was given a knife blow by the accused is corroborated by the medical evidence and the statement of PW10 Dr. R.J. Bishnoi. The occurrence was also witnessed by PW5 Gopi Ram. He was also alongwith the deceased and two others, i.e. complainant Balbir Singh and Naresh. He was given a slap by the accused and this witness had also started running after seeing the

accused with a knife in his hand. He has given a detailed account of the manner in which the accused inflicted two knife blows upon Sushil. The statement of Gopi Ram PW5 is absolutely in consonance with the statement given by Balbir Singh PW4. The testimonies of both the witnesses have not been shaken in any manner. They have given a truthful account of the entire occurrence and their statements, recorded initially, by the Police and in the Court are similar and there is no contradiction.

The statements of the aforementioned eye witnesses are also fully corroborated by the medical evidence. The injuries as stated by the eye witnesses PW4 Balbir Singh and PW5 Gopi Ram tally with the injuries found by Dr. Vikas Girdhar PW6. Although, PW6 found three injuries on the person of the deceased but from the statements of prosecution witnesses, it is clear that the deceased had been struck by one blow before he raised cries and thereafter the entire incident was witnessed by PW4 Balbir Singh and PW5 Gopi Ram and thus, there is no contradiction in the statements of the eye witnesses and the medical evidence.

As a result of the aforementioned discussion, we are of the considered opinion that the occurrence was witnessed by PW4 Balbir Singh and Gopi Ram PW5 who have given a truthful account of the incident. From their testimonies it is ample clear that the accused inflicted knife blows as a result of which Sushil died.

In view of the above, we uphold the conviction of the appellant Sanjay @ Dholu under Section 302 IPC and the sentence of rigorous imprisonment for life and fine of Rs.5000/- and in default of payment of fine further rigorous imprisonment for 2 years as awarded by Addl. Sessions Judge, Hisar vide his judgement and order of sentence dated 13.2.1998 and

14.2.1998, respectively and dismiss the appeal.

The bail bonds of the accused-appellant are cancelled. He be taken into custody forthwith to serve out the remaining period of his sentence.

(ASHUTOSH MOHUNTA)
JUDGE

December 5, 2007
Gulati

(RAKESH KUMAR GARG)
JUDGE